

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
**Rules and Regulations Implementing the** ) **CG Docket No. 02-278**  
**Telephone Consumer Protection Act of 1991** )

**COMMENTS OF SYTEL LIMITED**

The FCC has indicated that it welcomes comments on the FTC's final amendment to the Telemarketing Sales Rule, issued 18 Dec 2002, as a way of determining its own stance in respect of rules to restrict telemarketing calls. We would like to comment on the FTC updated rule. We would also like to comment on the submission made by the Direct Marketing Association to the FCC in December.

**1. The FTC Updated Rule**

**(i) Abandoned Calls**

The FTC has said

"The seller or telemarketer must employ technology that ensures abandonment of no more than three percent of all calls answered by a consumer, measured per day per calling campaign... An outbound telephone call is abandoned if, once the call has been answered by a consumer, the telemarketer fails to connect the call to a sales representative within two seconds of the consumer's completed greeting."

**Comment:**

In our December submission to the FCC we said that any attempt to set a rate lower than 3% is likely to lead to considerable non-compliance. We still believe this to be the case.

Now that Do-Not-Call legislation seems likely to be pervasive at both state and federal level in the US, it is quite unreasonable that those organizations that are exempt from compliance with such legislation should also be exempt from the restrictions being placed on predictive dialers. Excessive and unrestricted use of predictive dialers in the US has occurred not just in telemarketing, but in all activities. If non-telemarketing activities can continue to dial unrestrainedly, then this is likely to be a major factor in encouraging consumers to join Do-Not-Call lists.

**Recommendation:**

We recommend that the FCC set a call abandonment rate of not less than 3%. We also strongly recommend that this restriction be applied to **all** kinds of outbound dialing, with no dispensation for any special interest group.

**(ii) Dead Air Provision and the Playing of Messages**

The FTC has said

"Based on the record established on this issue - that use of predictive dialers inevitably entails some dead air and that two seconds of dead air allows predictive dialers to impart significant efficiencies - the amended Rule provision allows two seconds of dead air before a call answered by a consumer will be considered 'abandoned'... Delays of more than two seconds before connecting the call to a sales representative are prohibited... Whenever a sales representative is not available to speak with the person answering the call within two seconds of that person's completed greeting, the seller or telemarketer must promptly play a recorded message."

**Comment:**

We presume that this provision exists in order to enable dialers to deploy answering machine detection (AMD). We believe that the FCC should consider the issues here carefully before ruling.

**(a) AMD and Dead Air Calls**

There is no doubt that the use of answering machine detection can and usually does increase the amount of time that call center agents can spend in talking to prospects and customers. But offsetting this, is the negative impact that **any** dead air has on the quality of a call. Many consumers hangup immediately they detect dead air because they see it as unreasonable to be kept waiting on an unsolicited call.

In some cases, those consumers who do wait through dead air for an agent to come on the line, are certainly going to be less receptive to whatever the purpose of the call is, than otherwise.

Because of this, some call centers do not deploy AMD, preferring to have an agent available to respond to a 'first hello' from a consumer.

**(b) Impact on Do Not Call Lists**

From an industry perspective, in the absence of do not call lists on both a state and a federal level, it is often seen as reasonable to continue to deploy AMD and dead air, as and when it is judged to be suitable on a particular campaign.

However the existence of (any) dead air, was cited by privacy groups in California as being a (the?) main reason why consumers wanted a Do-Not-Call List there. Dial America, one of the largest outsourcers in the US, said in their submission to the FCC in December 2002, opposing a National Do-Not-Call List,

" Finally, if the specific problems inherent in outbound telemarketing today are not satisfactorily addressed, practically every consumer could eventually be on the national do-not-call list. Presumably only those consumers

who like to be hung up upon and like to hear  
" dead air" when they answer the phone will not  
be on the list."

**Recommendation:**

We recommend that the call center industry, and those who regulate it, should consider carefully the impact that continued widespread use of dead air may have on the propensity of consumers to join do not call lists.

**(iii) Early Hangup**

The FTC has said:

"The seller or telemarketer must allow each telemarketing call placed to ring for at least fifteen seconds or four complete rings before disconnecting an unanswered call."

**Comment:**

This has been quite a common dialer practice in the past, overlooked until the FTC ruled on it.

**Recommendation:**

We recommend that the FCC implement as per the FTC.

**2. Comment on Submission of the Direct Marketing Association**

The DMA has argued for a single standard to be applied to the use of predictive dialers for both interstate and intrastate purposes. We believe that it is essential the FCC should deploy whatever powers it has to accomplish this goal.

The DMA has pointed out that a single standard is desirable in order to promote efficient call center operation. We agree strongly with this statement. Multiple standards are likely to lead to considerable non-compliance and, penalties for these notwithstanding, this is in the interests of neither consumers nor call centers.

We are concerned too that individual states may lack the resources to examine the issues involved. For example the provision for a minimum hangup time on ringing calls has been consistently overlooked in California (though dealt with in both the DMA guidelines and the updated FTC rule (see 1.(iii) above)).

We thank the Commission for its consideration.

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